

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re PENREP, Inc.,
Debtor.

Case No. 97-58070-MM

Chapter 7

Memorandum Decision and Order

This matter comes before the court on the Application for First and Final Compensation and Reimbursement of Expenses By Special Counsel for Chapter 7 Trustee. Applicant Binder & Malter is seeking an award of fees in the amount of \$74,634.00 and reimbursement of costs advanced in the amount of \$1,152.92. At a hearing on October 23, 2001, the court allowed \$40,000 in fees and reserved ruling on the remainder of the application. For the reasons stated below the court disallows \$12,850.50 of the requested compensation and allows fees in a total amount of \$ 61,783.50 and the reimbursement of costs advanced in the amount of \$1,152.92.

FACTUAL BACKGROUND

Penrep, Inc. sought relief under Chapter 11 of the Bankruptcy Code on September 25, 1997 and Binder & Malter was retained as counsel for the Official Committee of Unsecured Creditors. Binder & Malter has waived the \$18,546.03 in fees it incurred during the Chapter 11 portion of this case and does not seek compensation for its services as Committee counsel. The case was converted to Chapter 7 on August 7, 1998 and Binder & Malter was subsequently appointed as special counsel to the Trustee. The purpose of its appointment was to pursue avoidance and collection actions.

On October 7, 1999, Binder & Malter filed a complaint to avoid and recover preferential and fraudulent transfers against 13 defendants. Compromises reached with three defendants were approved by the court. Claims for relief against the remaining defendants were dismissed. The adversary proceeding recovered \$251,750.00 for the estate, which contains sufficient funds to pay all Chapter 7 administrative claims as well as to provide a small distribution to unsecured creditors. The bar date for Chapter 11 administrative claims is January 15, 2002.

Nearly all of the lawyers employed by Binder & Malter during the two years this adversary proceeding was pending worked on the case. Many of the court's concerns regarding this application for compensation stem from the inefficiencies that necessarily result when six different attorneys in a firm provide services in a bankruptcy case.

LEGAL DISCUSSION

According to 11 U.S.C. § 330, a bankruptcy court should review all applications by professionals who seek compensation from the bankruptcy estate, and consider the nature, extent and value of their services. Any award of compensation must be reasonable and can only be allowed for actual, necessary services. If the court determines that legal services were provided that were not likely to benefit the estate or were not necessary for the case, the court may award less compensation than requested.

To provide practitioners with a consistent set of rules that judges would use to evaluate fee applications under the statutory mandate, the United States Bankruptcy Court for the Northern District of California promulgated Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees pursuant to Local Bankruptcy Rule 9029-1. Although the Guidelines do not have the force or effect of the Local Rules, compliance with the Guidelines is suggested for every professional seeking compensation in this District under 11 U.S.C. § 330. The application contains numerous items that deviate from the Guidelines. The court can find no reasonable justification to support these deviations and reduces the requested compensation accordingly.

A. Time Entries for Intraoffice Conferences Do Not Comply With Guideline 15.

Guideline 15 states that "[p]rofessionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Failure to justify this time may result in disallowance

of all fees related to such conferences.” The purpose of this Guideline is to eliminate or at least reduce the “incessant ‘conferencing’ that so often forms a major part of many fee petitions. While some intraoffice conferences may be necessary, no more than one attorney may charge for it unless an explanation of each attorney’s participation is given.” In re Chicago Lutheran Hospital Association, 89 B.R. 719, 736 (Bankr. N.D. Ill. 1988). This application contained 114 entries with a reference either to an intraoffice conference, a memorandum to another member of the firm, or one attorney reading a letter drafted by another attorney in the firm.

For most of the intraoffice conferences only one Binder & Malter attorney charged the estate for his or her time. However, in many instances Binder & Malter charged for the higher-billing attorney’s time. When two attorneys in the same firm have a meeting, the Guidelines allow compensation for the lower-billing attorney’s time unless the applicant provides justification to do otherwise. Where the court determined that a higher-billing attorney charged the estate for an intraoffice conference, the meeting is described below with an indication of the cost difference:

Page	Billing Atty	Services Rendered, Explanation of Cost Difference	Date	Reduction
5	Binder	Conference with associate counsel re: asset search of defendants - billed 0.25 hour at \$260 per hour instead of \$150.	5/31/00	27.50
10	Binder	Review incoming correspondence, settlement offer, conference with associate counsel re: same - billed 0.60 at \$260 per hour instead of \$210.	3/13/00	30.00
12	Binder	Review with associate counsel Harris re: status of discovery stipulation and discovery issues remaining - billed \$195 for 0.75 hour instead of \$42 for 0.20 hour.	6/7/00	153.00
13	Malter	Conference with attorney Harris re: status of settlement; proposed new discovery to be promulgated and motion and discovery cutoff in case - billed \$104 for 0.40 hour instead of \$21 for 0.10 hour.	6/15/00	83.00
15	Malter	Conference with attorney Harris re: status of settlement, status of discovery and response to information request, and trial strategy - billed \$117 for 0.45 hour instead of \$31.50 for 0.15 hour	9/5/00	85.50
17-18	Malter	Conference with attorney Lucas re: final settlement offer presented to defendant and timing of response to same - billed \$91 for 0.35 hour instead of \$73.50.	3/21/01	17.50

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19	Malter	Conference with attorney Lucas re: confirmation of settlement and preparation of remaining document(s) - billed \$78 for 0.30 hour instead of \$63.	5/16/01	15.00
23	Malter	Conference with attorney Harris re: preparation of discovery plan - billed \$65 for 0.25 hour instead of \$52.50.	4/28/99	12.50
23	Malter	Conference with attorney Harris re: discovery plan for trustee - billed \$130 for 0.50 instead of \$105.	5/25/99	25.00
23	Binder	Conference with associate counsel to evaluate litigation status, discovery issues and document production - billed \$234 for 0.90 hour instead of \$95.50 for 0.45 hour.	11/9/99	138.50
23	Binder	Conference with associate counsel re: discovery plan - billed \$130 for 0.50 hour instead of \$52.50 for 0.25 hour.	11/17/99	77.50
26	Binder	Evaluate necessity of deposition of Penrep CPA; review file re: same; instruct attorney Harris - billed \$117 for 0.45 hour instead of \$95.50.	5/22/00	21.50
28	Malter	Conference with attorney Harris re: pending discovery deadline and further discovery to be completed (.25); status of settlement discussions (.15) - billed \$104 for 0.40 hour instead of \$84.	7/11/00	20.00
28	Malter	Conference with attorney Harris re: Poblano discovery and status of discovery cutoff - billed \$104 for 0.40 hour instead of \$31.50 for 0.15 hour.	7/25/00	72.50
28	Binder	Review with associate counsel rest of deposition dates and completion of discovery - billed \$104 for 0.40 hour instead of \$84.	7/26/00	20.00
29	Malter	Conference with attorney Harris to confirm continuance of all pending discovery dates - billed \$52 for 0.20 hour instead of \$42.	11/15/00	10.00
30	Malter	Conference with attorney Harris re: status of discovery and pre-trial - billed \$117 for 0.45 hour instead of \$31.50 for 0.15 hour.	11/29/00	85.50
30	Malter	Conference with attorney Lucas re: status of discovery, Sardi and Mullaney depositions set for 12/8 - billed \$78 for 0.30 instead of \$63.	12/1/00	15.00
35	Malter	Conference with attorney Harris re: litigation strategy - billed \$78 for 0.30 hour instead of \$63.	3/30/00	15.00
35	Malter	Conference with attorney Harris re: completion analysis for trustee - billed \$52 for 0.20 hour instead of \$10.50 for 0.05 hour.	6/22/99	41.50

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36 - 37	Binder	Conference with associate counsel re: trustee representation - billed \$156 for 0.60 hour.	10/7/99	156.00
38	Malter	Conference with attorney Harris re: litigation strategy - billed \$91 for 0.35 hour instead of \$73.50.	11/3/99	17.50
39	Harris	Voice mail from Mr. Milde; memorandum to file; talk with attorney Beth Marshall - billed \$52.50 for 0.25 hour instead of \$37.50	11/11/99	15.00
47	Malter	Conference with attorney Harris re: status of litigation and trial setting - billed \$91 for 0.35 hour instead of \$73.50.	10/6/00	17.50
47	Malter	Conference with attorney Harris re: pending meet and confer - billed \$65 for 0.25 hour instead of \$52.50.	10/31/00	12.50
47	Malter	Conference with attorney Lucas re: case status and 2/27/01 status conference - billed \$91 for 0.35 hour instead of \$73.50.	1/25/01	17.50
54	Binder	Conference with associate counsel - assign tasks re: Poblano claim of title passing - billed \$78 for 0.30 hour instead of \$63.	9/12/00	15.00
55	Malter	Conference with attorney Harris re: status of 2004 exam - billed \$65 for 0.25 hour instead of \$52.50.	8/18/99	12.50
56	Binder	Conference with associate counsel re: 2004 exams and document production - billed \$208 for 0.80 hour instead of \$168.	11/1/99	40.00
56	Malter	Conference with attorney Harris re: preparation for 2004 exam - billed \$65 for 0.25 hour instead of \$52.50.	12/1/99	12.50
			TOTAL	\$1,282.00

Consequently, the court will disallow \$1,282.00 of the compensation requested because the applicant charged for the higher-billing attorney's time when there was an intraoffice conference.

The next seven time entries are an example of the inefficiency that results when two attorneys address a simple, discrete issue. Heinz Binder spent 0.45 hour preparing a memorandum to Robert Harris regarding the investigation of two of the adversary defendants' financial matters. Harris billed six minutes to read the memo and discuss it, while Binder billed 0.65 hour for that same discussion. Harris subsequently recorded three time entries totalling 36 minutes addressing the matter, as well as 0.15 hour preparing a memorandum back to Binder. Binder & Malter has not provided any justification for two attorneys to spend 81 minutes drafting

internal memos and discussing an issue that only required 36 minutes to address. Consequently, the court will disallow \$338.50 of the compensation requested for the 81 minutes of unnecessary services:

Billing Atty	Services Rendered	Date	Time	Dollars
Binder	Memo to associate counsel re: investigate opposing party financial and communicate with trustee broker	6/23/00	0.45	117.00
Harris	Read email from attorney Binder re: real estate evaluation; discuss	6/23/00	0.10	21.00
Binder	Conference with associate counsel re: financials of Mullaney and Sardi	6/23/00	0.65	169.00
Harris	Telephone call to Ms. Bean re: real estate evaluation, left message to call back	6/23/00	0.05	10.50
Harris	Review 7/6 Robertson letter and attached property profile	7/10/00	0.15	31.50
Harris	Review 6/29 Robertson letter, Heinz Binder letter of 6/6 and scan attached property profiles	7/10/00	0.40	84.00
Harris	Do memo to attorney Binder re: profiles	7/10/00	0.15	31.50

Finally, all of the attorneys at Binder & Malter devoted several hours to reading each other's letters and memoranda, without an explanation of why such review was necessary. These time entries are a further example of the unnecessary duplication of effort that occurs when several attorneys work on different parts of a case file and constantly require updates as to what each has accomplished:

Page	Billing Atty	Services Rendered	Date	Time	Dollars
7	Lucas	Memo to attorney Binder re: spreadsheet of assets on Mullaney/Sardi prospects for settlement	1/4/01	0.50	105.00
9	Harris	Read 9/18 Binder letter to M. Rubin	9/19/00	0.10	21.00
9	Harris	Read 10/15 letter to Thomas re: Kobe Precision	10/18/00	0.10	21.00
11	Harris	Create e-mail to Heinz Binder re: status	4/17/00	0.10	21.00
11	Harris	Review Heinz Binder letter of 5/25 to Ms. Infante	5/25/00	0.15	31.50
11	Harris	Read attorney Binder's counter offer of 5/17 to Ms. Infante	5/26/00	0.20	42.00
12	Rao	Review memo from attorney Binder re: dismissal of certain defendants from lawsuit	6/8/00	0.10	21.00

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12	Harris	Read 6/7 Binder letter to Infante on settlement	6/12/00	0.15	31.50
19	Lucas	Review file and memo to attorney Binder and attorney Harris re: settlement proposal, review attorney Binder's letter	6/28/01	0.50	105.00
19	Binder	Letter to Wayne Thomas re: settlement, memo to associate counsel re: same	7/5/01	0.85	221.00
23	Harris	Review file and do memo per request	7/16/99	0.60	126.00
30	Marshall	Review attorney Harris' memo re: trustee request and review of package for trustee	8/18/98	0.30	45.00
35	Malter	Conference with attorney Harris re: litigation strategy	03/30/99	0.30	78.00
38	Harris	Do e-mail to Heinz Binder re: Heymann assistance	10/27/99	0.15	31.50
38	Harris	Discuss method of service with GL, read memo	10/29/99	0.15	31.50
40	Harris	Talk to Heinz Binder about compromise, issues	12/7/99	0.20	42.00
41	Harris	Do memo to Heinz Binder on Penrep, discuss with Heinz Binder, call Ms. Thorpe and send e-mail and confirming letter	1/20/00	0.90	189.00
41	Harris	Review 2/10 Heinz Binder letter to Mr. Robertson and attachments	2/18/00	0.40	84.00
42	Harris	Review letter from trustee's counsel re: contingency and draft memo to Heinz Binder on status of same	2/19/00	0.25	52.50
42	Binder	Memo to associate counsel to dismiss Gabriel	3/9/00	0.10	26.00
43	Harris	Conference with Heinz Binder re: Penrep summary judgment	5/17/00	0.75	157.50
43	Harris	Review Heinz Binder letter of 5/23 to Robertson/Rubin	5/24/00	0.15	31.50
43 - 44	Harris	Conference with Heinz Binder, Julie Rome-Banks to assess summary motion, strategy	5/24/00	0.75	157.00
45	Rao	Memo to attorney Binder re: request by attorney Infante for continuance of status conference	6/13/00	0.10	21.00
45	Harris	Study Heinz Binder's letter to Infante of 6/15	6/21/00	0.15	31.50
46	Harris	Do memo to attorney Binder re: deadlines	7/14/00	0.15	31.50
				TOTAL	\$1,755.50

Binder & Malter also charged the estate for two attorneys to attend the deposition of James Mullaney on December 14, 1999. Since no explanation is provided as to why two attorneys were necessary or which attorney conducted the deposition, the court will only allow compensation for services rendered by the lower-billing attorney. The 2.75 hours spent by the senior attorney at a cost of \$715.00 will not be compensated.

B. Time Entries for Ministerial or Administrative Tasks Do Not Comply With Guideline 18.

Guideline 18 provides that “[t]ime spent in addressing, stamping and stuffing envelopes, filing, photocopying or ‘supervising’ any of the foregoing is not compensable, whether performed by a professional, paraprofessional or secretary.” As a result, the following time entries for administrative or ministerial work are noncompensable:

Page	Billing Atty	Services Rendered	Date	Time	Dollars
4	Marshall	Began organizing file on Sardi and Mullaney information	10/15/99	0.75	112.50
4	Marshall	Preparation of file and further organized data on Sardi and Mullaney and real property	10/18/99	1.00	150.00
8	Rao	Review file	6/8/00	0.20	42.00
10	Harris	Calendar and tickle extension to respond	3/14/00	0.15	31.50
20	Lucas	Instruct legal assistant re: faxing of settlement to attorney Thomas	7/18/01	0.10	21.00
20	Lucas	E-mail from clerk re: calendar date on motion and calendar the date	7/18/01	0.20	42.00
20	Lucas	Finalize settlement agreement and instruct legal assistant re: forwarding and signature(s)	7/18/01	0.25	52.50
21	Lucas	Instruct legal assistant re: obtaining Robertson’s signature/advise of funds	7/26/01	0.15	31.50
21	Lucas	Instruct legal assistant re: service of points and authorities	8/1/01	0.10	21.00
21	Lucas	Instruct legal assistant re: service list	8/3/01	0.20	42.00
22	Lucas	Amend motion and instruct legal assistant re: service	8/6/01	0.40	84.00
30	Lucas	Re-calendar continued SC; instruct legal assistant re: calendar and tickle new dates	12/8/00	0.20	42.00
34	Harris	Review and sign change of address	11/15/99	0.05	10.50
37	Harris	Call and locate Sitek address	10/13/99	0.15	31.50

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1	44	Harris	Call calendar clerk re: date for hearing	5/24/00	0.15	31.50
2	44	Harris	Call clerk re: September adversary proceeding calendar	5/26/00	0.10	21.00
3	46	Harris	Calendar and tickel deadlines in court orders	7/14/00	0.25	52.50
4	48	Lucas	Telephone call with Judge Morgan's clerk re: continuing trial setting and conference	2/23/01	0.30	63.00
5	50	Lucas	Review attorney Binder's memo, docket, instruct legal assistant re: scheduling order, calendar dates	7/12/01	1.25	262.50
6	50	Lucas	E-mail to and from legal assistant re: attorney Binder's availability on 9/26	7/27/01	0.15	31.50
7	51	Lucas	Telephone call with Judge Morgan's clerk re: hearing	9/6/01	0.15	31.50
8	51	Lucas	Instruct legal assistant re: faxing and filing of dismissal	9/21/01	0.25	52.50
9	51	Harris	Do calendar and tickle memo on pre-petition order	1/28/00	0.15	31.50
10	51	Harris	Revise calendar and tickle memo	2/1/00	0.05	10.50
11	51	Harris	Revise priority task list	2/11/00	0.15	31.50
12	51	Harris	Review Ms. Rubin's change of address	2/29/00	0.10	21.00
13	51	Harris	Review and revise task list	3/20/00	0.10	21.00
14	51	Harris	Update status, task list	4/10/00	0.10	21.00
15	52	Harris	Update task/priority list	4/25/00	0.05	10.50
16	52	Harris	Update case status, task list	6/12/00	0.25	52.50
17	52	Harris	Update status/task list	6/26/00	0.10	21.00
18	52	Harris	Update status/task list	7/24/00	0.15	31.50
19	52	Harris	Update status/task list	8/9/00	0.10	21.00
20	52	Harris	Update status/task list	8/21/00	0.15	31.50
21	52	Harris	Update status/task list	9/1/00	0.10	21.00
22	52	Harris	Update case status/strategy list	9/15/00	0.15	31.50
23	52	Harris	Update status/task list	10/3/00	0.10	21.00
24	52	Harris	Revise status/task list	10/19/00	0.15	31.50
25	52	Harris	Update status/task list	10/30/00	0.10	21.00
26	52	Harris	Update case status/task list	11/13/00	0.15	31.50
27						
28						

52	Harris	Update case status/task list	11/27/00	0.15	31.50
52	Harris	Update status/task list	12/11/00	0.10	21.00
52	Harris	Update status/task list	1/15/01	0.15	31.50
52	Harris	Update status/task list	2/15/01	0.05	10.50
52	Harris	Update case status/task list	2/26/01	0.10	21.00
52	Harris	Update case status/task list	4/12/01	0.10	21.00
52	Harris	Revise case status/task list	5/8/01	0.10	21.00
52	Lucas	Prepare firm name change	5/11/01	0.10	21.00
52	Lucas	Review correspondence, filed notice of firm name change	5/17/01	0.15	31.50
52	Harris	Update case status/task list	5/17/01	0.10	21.00
53	Harris	Update status/task list	6/21/01	0.10	21.00
53	Harris	Update timing of final tasks	7/10/01	0.10	21.00
53	Harris	Review file and analyze case strategy/update to do list in light of case developments	7/26/01	0.10	21.00
53	Lucas	Calendar dates and update with attorney Binder	8/28/01	0.40	84.00
				TOTAL	\$2,100.00

As a result, the court will disallow a total of \$2,100.00 for administrative or ministerial work.

C. Applicant Billed \$839.00 to Revise Rule 2016(b) Declaration Due to Its Own Mistake.

When Binder & Malter sought employment as special counsel to the Trustee, it disclosed its claim for \$19,206.81 for services rendered during the Chapter 11 case as counsel to the Committee. According to paragraph 8 of the declaration submitted in support of Binder & Malter's application for employment, with the exception of that claim for Chapter 11 services, "Binder & Malter has no connections with the Debtor, any creditors, any other party in interest, their respective attorneys and accountants" or the U.S. Trustee.

On March 9, 2000, however, counsel for the two of the defendants in the adversary proceeding wrote to Binder & Malter alleging a conflict of interest:

[Sardi and Mullaney] remembered that they sought legal advice from Binder & Malter in 1996 concerning Penrep, Inc.'s ("Penrep") financial problems and options for resolution of these problems through a bankruptcy. They met with your firm for more that [sic] hours discussing and explaining various confidential documents and other information. They paid a consulting fee. The canceled check would be among Penrep's records in the custody of the Chapter 7 trustee. A record will also be on the Penrep hard drive, also in the custody of the Chapter 7

trustee. . . . The disclosure and discussion of personal financial information by Mr. Sardi and Mullaney to your firm may present a conflict of interest.

In response to this letter, Binder & Malter conducted an internal investigation which revealed that in 1996 attorney David Rao met with Sardi and Mullaney to consult about Penrep's financial situation. On July 11, 2000, Binder & Malter filed a supplemental declaration with the Court, disclosing the consultation, Sardi and Mullaney's allegations, and stating that no personal matters regarding Sardi or Mullaney had been discussed in the 1996 meeting. The supplemental declaration further stated that Rao had never discussed the Penrep case with any of the attorneys at Binder & Malter and had no idea that the firm had represented the Committee or the Trustee.

To address these allegations and file the supplemental declaration, Binder & Malter charged the estate \$839.00. The court will not allow compensation for this time. The estate should not pay for Binder & Malter's failure to maintain an adequate conflicts check system; according to the declaration, it was only "[t]hrough inadvertence [that] the names were not placed into the firm's conflicts database." This reduction in fees is especially warranted in light of the fact that Binder & Malter's application contradicts Rao's July 11 declaration. Rao spent an hour researching a legal issue in this case on February 2, 2000, more than a month before Sardi and Mullaney's letter to Binder & Malter.

D. Applicant Improperly Billed the Estate When an Attorney Left a Message for Other Parties to Return a Call.

This application contained numerous entries where an attorney left a message for another attorney or party and billed the estate for that time:

Page	Billing Atty	Description of Services	Date	Time	Dollars
1	Harris	Call Mr. Greene re: records, left message to call back.	10/16/98	0.05	10.50
1	Harris	Call to Mr. Howitson re: records, left message to call back.	10/16/98	0.05	10.50
2	Harris	Call to Mr. Hackett re: records - left message to call back.	10/21/98	0.10	21.00
2	Harris	Telephone call with Mr. Howitson, left message to call back.	12/4/98	0.05	10.50
3	Harris	Telephone call to Mr. Heymann re: sales, left message to call back.	2/3/99	0.05	10.50

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3	Harris	Telephone call to Mrssrs Robertson and Isaacs, Mr. Rubin, left message to call back.	6/11/99	0.20	42.00
8	Rao	Telephone call to attorney Greene re: bankruptcy by World Gym - left message to call back.	6/8/00	0.10	21.00
10	Binder	Telephone call to attorney Rubin, left message to call back.	3/14/00	0.05	13.00
12	Binder	Telephone call to attorney Rubin - left message to call back re: settlement negotiations.	6/12/00	0.10	26.00
15	Harris	Call to Mr. Milgrom, left message to call back.	9/13/00	0.10	21.00
25	Binder	Telephone call to Mr. Milde, left message to call back.	12/23/99	0.05	13.00
25 - 26	Harris	Telephone call to Mr. Branton re: deposition (x3), left message to call back.	5/19/00	0.15	31.50
26	Harris	Telephone call to Ms. Infante re: deposition of CRA, left message to call back.	5/19/00	0.10	21.00
26	Harris	Telephone call to K. Infante re: motion cut-off, discovery, left voice mail.	5/23/00	0.15	31.50
27	Harris	Telephone call to Mr. Branton, left message to call back re: cancellation of deposition.	6/9/00	0.10	21.00
28 - 29	Harris	(2) telephone call(s) to Mr. Thomas, left message to call back re: deposition date and administrative claim, left message to call back.	9/13/00	0.15	31.50
31	Harris	Return telephone call to Ms. Rubin, left message to call back.	8/25/98	0.10	21.00
32	Harris	Call Ms. Rubin, left message to call back re: wavier 2016(b).	6/30/00	0.10	21.00
39	Harris	Call to Ms. Faraum, left message to call back.	11/5/99	0.10	21.00
39	Harris	Call Mr. Milde back, left message to call back.	11/10/99	0.10	21.00
39	Harris	Call to Mr. Greene re: file review, left message to call back.	11/10/99	0.10	21.00
40	Harris	Return telephone call to Mr. Milde re: meeting; left message to call back.	12/2/99	0.10	21.00
42	Harris	Return telephone call(s) Mr. Heymann, left message to call back.	3/22/00	0.05	10.50
45	Harris	Telephone call to Ms. Infante re: status conference, left message to call back.	6/20/00	0.05	10.50
49	Binder	Telephone call to Mr. Johnson, left message to call back.	3/28/01	0.10	26.00
TOTAL					\$508.50

Leaving a message for another party or opposing counsel is not compensable as legal work. See In re Copeland, 154 B.R. 693, 702 (Bankr. W.D. Mich. 1993). As a result, the court will disallow \$508.50 of the requested compensation.

E. Applicant Billed the Estate Over \$5,200 for Memoranda to the File.

Throughout the application, each of the attorneys who worked on the case wrote memoranda to the file. Attorney Harris generated dozens of memoranda to memorialize his various voice mail messages and phone calls. This practice troubles the court, for it reflects an inefficient allocation of resources. Too much time is being spent making notes for other attorneys to ensure that each lawyer is up to date on what the others have accomplished. Additionally, each time a memorandum to file is recorded it is lumped in with other services, leaving the court without any guidance as to how much time was spent providing legal services versus writing notes for other attorneys in the firm. For these reasons, the court will disallow the compensation requested for the following time entries:

Page	Billing Atty	Description of Services	Date	Time	Dollars
1	Harris	Return telephone call to Mr. Gold re: asset purchases and rumors re: insider; memorandum to file	8/13/98	0.25	52.50
3	Harris	Voice mail from Mr. Heymann re: MTT's and SRO's; memorandum to file.	6/8/99	0.15	31.50
3	Harris	Discuss fax with Peggy, 1099 issues; memorandum to file.	10/13/99	0.25	52.50
4	Harris	Voicemail from Peggy Connolly re: location of assets; memorandum to file.	10/20/99	0.15	31.50
4	Harris	Voicemail from Ms. Connolly; memorandum to file.	11/8/99	0.15	31.50
4	Harris	Voicemail from Mr. Heymann re: information on principals; memorandum to file.	11/8/99	0.15	31.50
4	Harris	Voicemail from Peggy Connolly; memorandum to file.	12/9/99	0.15	31.50
5	Harris	Voicemail from Mr. Heymann; memorandum to file.	1/12/00	0.15	31.50
5	Binder	Telephone call to trustee, telephone call to Ms. Infante, all re: financials; memorandum to file.	6/13/00	0.40	104.00

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6	Harris	Voicemail from creditor Heymann; memorandum to file.	9/7/00	0.15	31.50
6	Harris	Voicemail from Peggy Connolly re: status; memorandum to file.	9/8/00	0.15	31.50
7	Harris	Voicemail from Steve Heymann re: status; memo to file.	11/30/00	0.10	21.00
7	Harris	Voicemail from Mr. Heymann to call with status report; memorandum to file.	1/26/01	0.15	31.50
7	Harris	Voicemail from Steve Heymann re: status; memorandum to file.	3/23/01	0.15	31.50
8	Harris	Voicemail from Peggy Connolly re: status, Gabriel; memorandum to file.	3/23/01	0.15	31.50
8	Binder	Telephone call to Ms. Rubin; memorandum to file re: administrative claims and status.	5/23/00	0.20	52.00
8	Harris	Telephone call with Steve Heymann re: Sardi bankruptcy rumor; memorandum to file.	6/22/00	0.20	42.00
9	Binder	Telephone call to attorney Rubin re: administrative claim in case; memorandum to file.	3/1/01	0.10	26.00
9	Binder	Telephone call from Ms. Rubin re: Kobe claim; memorandum to file.	3/12/01	0.20	52.00
9	Harris	Talk to Trustee Robertson on reaction to letter and relate result to Heinz Binder; memorandum to file.	2/14/00	0.20	42.00
10	Harris	Telephone call with Ms. Rubin re: getting extension on offer; memorandum to file.	3/14/00	0.20	42.00
11	Binder	Telephone call from Ms. Infante - settlement negotiations; memorandum to file.	5/24/00	0.85	221.00
11	Binder	Telephone call from Ms. Rubin re: settlement; memorandum to file.	5/31/00	0.25	65.00
11	Binder	Review voicemail from Infante, memorandum to file.	6/6/00	0.10	26.00
11 - 12	Binder	Telephone call from Ms. Infante, memorandum to file.	6/7/00	0.30	78.00
12	Binder	Telephone call from opposing counsel Infante re: settlement negotiations; memorandum to file.	6/8/00	0.30	78.00
13	Harris	Voicemail from Mr. Thomas to meet and confer; memorandum to file.	6/20/00	0.15	31.50

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13	Harris	Talk to Kathy Infante re: settlement; memorandum to file.	6/20/00	0.20	42.00
13	Harris	Telephone call with Wayne Thomas about case status, cutoffs, settlement; stipulation; memorandum to file.	6/21/00	0.35	73.50
13	Harris	Second call with Wayne Thomas on settlement; memorandum to file.	6/22/00	0.20	42.00
14	Harris	Locate Cohen case, letters for Heinz Binder; memorandum to file.	7/28/00	0.25	52.50
14	Binder	Review voice mail from attorney Thomas, memorandum to file, return telephone call, memorandum to file.	8/9/00	0.25	65.00
14	Binder	Telephone call to attorney Thomas; memorandum to file.	8/16/00	0.45	117.00
15	Harris	Second call with Milde re: settlement; memorandum to file.	10/18/00	0.15	31.50
15	Lucas	Telephone call to attorney Thomas re: joint statement and settlement of case and memo to file, calendar statement.	1/2/01	0.20	42.00
15	Lucas	Voice mail from attorney Thomas and memo to file.	1/9/01	0.20	42.00
16	Lucas	Voice mail from attorney Thomas and memo to file.	1/9/01	0.20	42.00
16	Lucas	Telephone call from attorney Thomas re: Sardi updates and trial date and memo to file.	2/22/01	0.30	63.00
16	Harris	Voice mail from Sumitomo Silicon re: compr. Notice; memo to file.	3/1/01	0.15	31.50
16	Lucas	Telephone conference with attorney Thomas and memo to file re: new financials	3/6/01	0.30	63.00
17	Binder	Review asset base and revise settlement proposal; memorandum to file.	3/6/01	0.50	130.00
17	Harris	Voicemail from Peggy Connolly re: issues, compromise; memorandum to file.	3/6/01	0.15	31.50
18	Binder	Telephone call(s) with Mr. Thomas, memorandum to file (x2) re: settlement negotiations.	3/30/01	0.55	143.00
18	Binder	Telephone call to attorney Rubin re: settlement; memorandum to file.	3/30/01	0.15	39.00
19	Lucas	Telephone call from Wayne Thomas with update of status and memo to file.	4/27/01	0.15	31.50

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19	Binder	Telephone call to Ms. Rubin, memorandum to file.	7/3/01	0.10	26.00
22	Lucas	Telephone call to Wayne Thomas and memo to file re: deed of trust and order.	8/17/01	0.20	42.00
24	Harris	Voice mail from Mr. Heymann re: document(s); memorandum to file.	12/13/99	0.15	31.50
26	Harris	Telephone call with K. Infante re: deposition date; memorandum to file.	5/22/00	0.25	52.50
26	Harris	Telephone call with Ms. Infante re: deposition schedule; memorandum to file.	5/23/00	0.15	31.50
27	Harris	Voice mail from John Branton re: deposition; memorandum to file.	5/25/00	0.15	31.50
28	Harris	(2) voice mails from Mr. Thomas about discovery, depositions; memorandum to file.	8/23/00	0.15	31.50
29	Binder	Telephone call from attorney Thomas; memorandum to file.	9/15/00	0.50	130.00
31	Binder	Telephone call from trustee, memorandum to file.	6/21/00	0.25	65.00
32	Harris	Voice mail from Ms. Rubin on 2016(b) declaration; memorandum to file.	7/10/00	0.15	31.50
34	Harris	Telephone call with Dennis Bean re: trial, settlement, employment status; memorandum to file.	10/27/00	0.20	42.00
36	Harris	Voice mail from Ms. Doherty re: suit; memorandum to file.	8/10/99	0.15	31.50
37	Harris	Talk to M. Rubin re: complaint; memorandum to file.	10/7/99	0.25	52.50
37	Harris	Speak to Helen Rakove re: waiver; memorandum to file.	10/21/99	0.35	73.50
38	Harris	Voice mail from Ms. Rakove re: waiver; memorandum to file.	10/26/99	0.15	31.50
38	Harris	Talk with Kelly Evans re: complaint; memorandum to file.	11/1/99	0.55	115.50
38	Harris	Do memorandum to file re: amendment to complaint.	11/1/99	0.40	84.00
38	Harris	Go over complaint with Ms. Connolly; memorandum to file.	11/1/99	0.40	84.00
38	Harris	Voice mail from from K. Infante; memorandum to file; call re: extending.	11/1/99	0.20	42.00

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39	Harris	Talk with Kelly Evans re: complaint; memorandum to file.	11/4/99	0.40	84.00
39	Harris	Voice mail from B. Milde re: lawsuit - will be representing Tom Poblano and Phil Gabriel, extension; memorandum to file.	11/4/99	0.15	31.50
39	Harris	Voice mail from Mr. Milde re: Cobrel extension; memorandum to file.	11/9/99	0.15	31.50
39	Harris	Voice mail from Ms. Infante re: civil complaint; memorandum to file.	11/16/99	0.15	31.50
39	Harris	Voice mail from K. Infante on litigation; memorandum to file; respond.	11/18/99	0.20	42.00
39	Harris	Voice mail from Ms. Infante; memorandum to file.	11/18/99	0.15	31.50
39	Harris	Return telephone call to Milde re: meeting; memorandum to file.	11/22/99	0.20	42.00
40	Harris	Voice mail from Kelly Evans; memorandum to file.	11/23/99	0.15	31.50
40	Harris	Voice mail from Mr. Milde; memorandum to file on resolution.	11/24/99	0.10	21.00
40	Harris	Voice mail from Mr. Milde re: meeting; memorandum to file.	11/30/99	0.15	31.50
40	Harris	Talk to Kathy Infante (x2) re: document(s); memorandum to file.	12/6/99	0.30	63.00
40	Harris	Voice mail Ms. Infante on document production and dates; memorandum to file.	12/6/99	0.15	31.50
40	Harris	(2) voice mail messages from K. Infante; meet and confer; (2) memos to file; speak with Kathy to discuss issues.	12/29/99	0.35	73.50
41	Harris	Participate in status conference; memorandum to file; calendar and tickle.	1/6/00	0.35	73.50
41	Binder	Telephone call to Ms. Rubin, memorandum to file.	2/16/00	0.25	65.00
41	Binder	Telephone call from Mr. Milde, review voice mail, memorandum to file; telephone call to Mr. Milde re: Poblano and Gabriel.	2/17/00	0.60	156.00
42	Binder	Review voice mail from Mr. Milde, memorandum to file, return telephone call, left message to call back (voice mail).	3/9/00	0.20	52.00
42	Binder	Review voice mail from attorney Milde re: Poblano case, memorandum to file.	3/13/00	0.20	52.00

UNITED STATES BANKRUPTCY COURT
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42	Harris	Voice mail from Mr. Heymann with update; memorandum to file.	3/17/00	0.15	31.50
43	Binder	Telephone call to Ms. Infante; memorandum to file.	5/19/00	0.15	39.00
44	Binder	Telephone call from creditor Picone, memorandum to file re: Heymann.	6/8/00	0.40	104.00
45	Harris	Voice mail from Infante; memorandum to file.	6/19/00	0.15	31.50
45	Binder	Review voice mail from trustee, memorandum to file return telephone call, left message to call back.	6/20/00	0.10	26.00
46	Harris	Voice mail from Gunter re: appearance; memorandum to file.	6/23/00	0.10	21.00
46	Harris	Telephone call from Wayne Thomas re: meetings; memorandum to file.	6/28/00	0.15	31.50
47	Binder	Telephone call from Mr. Thomas re: settlement and discovery issues, memorandum to file, email instruct secretary.	10/24/00	0.40	104.00
47	Harris	Voice mail from Michelle Rubin re: status; memorandum to file.	1/29/01	0.10	21.00
48	Harris	Voice mail from Breck Milde re: Gabriel dismissal; memorandum to file.	3/22/01	0.15	31.50
49	Harris	Telephone call with Peggy Connolly re: status of settlement; memorandum to file.	3/27/01	0.15	31.50
49	Binder	Telephone call to attorney Thomas re: pre-trial; memorandum to file.	3/30/01	0.15	39.00
49	Binder	Telephone call to Mr. Thomas re: pre-trial court order, review and revise court order, instruct secretary; memorandum to file.	3/30/01	0.55	143.00
50	Binder	Travel to and from pretrial court hearing and attend memorandum to file.	4/10/01	0.35	91.00
50	Harris	Voice mail from creditor Heymann; memorandum to file.	6/7/01	0.15	31.50
50	Harris	Voice mail from Peggy Connolly re: status; memorandum to file.	6/26/01	0.15	31.50
51	Harris	Voice mail from Peggy Connolly re: service; memorandum to file.	8/2/01	0.15	31.50
55	Harris	Voice mail from Mr. Heymann; memorandum to file.	9/15/99	0.15	31.50
56	Harris	Voice mail from Ms. Thorpe re: continued 2004 exam; memorandum to file.	1/18/00	0.15	31.50

			TOTAL	\$5,291.00
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The Court will not allow \$5,291.00 of the requested compensation because drafting memoranda to the file is not an actual, necessary service that provides a benefit to the estate.

Finally, the Employment category contained an entry from January 23, 1998 for \$21.00, which will be disallowed as recorded during the Chapter 11 case.

CONCLUSION

The Bankruptcy Code requires a judge to review applications for compensation and award only reasonable compensation for actual, necessary services. The judges of this district promulgated the Guidelines in order to provide practitioners with some certainty that the legal services they rendered would be compensable under 11 U.S.C. § 330. Although compliance with the Guidelines is not mandatory, requests for compensation will not be allowed where no justification has been provided for deviations.

This application contained dozens of entries that do not comply with the Guidelines or otherwise reflect services that were not actual and necessary: charging for the higher-billing attorney in an intraoffice conference; billing for time spent reading letters and memoranda generated by other attorneys in the firm; performing ministerial or administrative work; leaving messages for other parties; revising a declaration due to the applicant's own mistake; and writing memoranda to the file. This last item raises an especial concern for the court, because it is the result of six attorneys working on a single bankruptcy case. The Bankruptcy Code states that no compensation shall be allowed for unnecessary duplication of services, and when multiple attorneys are addressing each and every issue, they cannot possibly avoid unnecessary duplication.

For the reasons stated above, the court will disallow a total of \$12,850.50 of the compensation requested in Binder & Malter's application.

Good cause appearing, IT IS HEREBY ORDERED that:

The application for fees is allowed in the amount of \$21,783.50, for a total award for fees of \$61,783.50; and

The application for reimbursement of costs is allowed in the amount of \$1,152.92.

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

1 DATED: _____

UNITED STATES BANKRUPTCY JUDGE

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Case No. 00-53226

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Clerk in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I am familiar with the method by which items to be dispatched in official mail from the Clerk's Office of the United States Bankruptcy Court in San Jose, California processed on a daily basis: all such items are placed in a designated bin in the Clerk's office in a sealed envelope bearing the address of the addressee, from which they are collected at least daily, franked, and deposited in the United States Mail, postage pre-paid, by the staff of the Clerk's Office of the Court;

That, in the performance of my duties, on the date set forth below, I served the **Memorandum Decision and Order** in the above case on each party listed below by depositing a copy of that document in a sealed envelope, addressed as set forth, in the designated collection bin for franking, and mailing:

Heinz Binder
Robert G. Harris
C. Laine Lucas
Binder & Malter LLP
2775 Park Avenue
Santa Clara, California 95050

In addition, I am familiar with the Court's agreed procedure for service on the United States Trustee, by which a copy of any document to be served on that agency is left in a designated bin in the Office of the Clerk, which bin is collected on a daily basis by the United States Trustee's representative. In addition to placing the above envelopes in the distribution bin for mailing, I placed a copy of the **Memorandum Decision and Order** in the United States Trustee's collection bin on the below date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:

Clerk